

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

ANTHONY SMITH, Individually and on behalf of all
others similarly situated,

Plaintiff,

v.

X-RITE, INC., THOMAS J. VACCHIANO, JOHN E.
UTLEY, GIDEON ARGOV, BRADLEY J. COPPENS,
DAVID A. ECKERT, COLIN M. FARMER, DANIEL
M. FRIEDBERG, L. PETER FRIEDER, MARK D.
WEISHAAR, DANAHER CORPORATION, and
TERMESSOS ACQUISITION CORP.,

Defendants.

Civil Action No. 1:12-cv-00386

SHANNON STORM, On Behalf of Herself and All
Others Similarly Situated,

Plaintiff,

v.

X-RITE, INC., THOMAS J. VACCHIANO, JOHN E.
UTLEY, GIDEON ARGOV, BRADLEY J. COPPENS,
DAVID A. ECKERT, COLIN M. FARMER, DANIEL
M. FRIEDBERG, L. PETER FRIEDER, MARK D.
WEISHAAR, DANAHER CORPORATION, and
TERMESSOS ACQUISITION CORP.,

Defendants.

Civil Action No. 1:12-cv-00414

**STIPULATION AND [PROPOSED] CASE MANAGEMENT ORDER
CONSOLIDATING ACTIONS AND APPOINTING LEAD COUNSEL**

WHEREAS, on April 10, 2012, X-Rite, Inc. (“X-Rite” or the “Company”) announced
that it had entered into a definitive merger agreement with Danaher Corporation (“Danaher”) and

Termessos Acquisition Corp. (“Merger Sub”), which provides for a cash tender offer (the “Tender Offer”) in which Danaher would acquire all of the Company’s outstanding stock for \$5.55 per share, to be followed by a merger of Merger Sub with and into the Company (the “Proposed Transaction”); and

WHEREAS, two actions were filed in this Court, challenging certain aspects of the Tender Offer as follows:

1. *Smith v. X-Rite, Inc.*, C.A. No. 1:12-cv-00386 (filed April 20, 2012);
2. *Storm v. X-Rite, Inc.*, C.A. No. 1:12-cv-00414 (filed April 26, 2012);

WHEREAS, the plaintiff in each actions filed in this Court have reached an agreement (set forth below) regarding the consolidation of the actions (the “Consolidated Action”) and appointment of lead plaintiff and lead counsel. It appearing that the above-captioned actions involve the same subject matter, administration of justice would be best served by consolidating the actions;

WHEREAS, defendants have agreed to accept service of the Summons and Complaint in the actions, and hereby waive any defense based on service of process;

WHEREAS, defendants agree to consolidation of the actions and take no position on the matter of designation of Interim Plaintiffs and Interim Plaintiffs’ Co-Lead Counsel;

WHEREAS, in order to promote judicial economy and avoid duplication, the Court finds that it would be appropriate to consolidate the actions;

NOW, THEREFORE, it is hereby STIPULATED, AGREED, and SO ORDERED as follows:

A. CONSOLIDATION OF RELATED ACTIONS

1. The above captioned actions currently pending before this Court are consolidated for pretrial purposes pursuant to Fed. R. Civ. P. 42(a). The consolidated cases shall be captioned *In re X-Rite Shareholder Litigation*, C.A. No. 1:12-cv-00386 (the “Consolidated Action”).

2. This Case Management Order No. 1 for the consolidated actions (“Order”) shall apply as specified to each related case that is subsequently filed in this Court or transferred to this Court and is consolidated with the Consolidated Action.

3. Hereafter, papers need only be filed in Civil Action No. 1:12-cv-00386.

4. The caption of the Consolidation Action will be as follows:

IN RE X-RITE SHAREHOLDER LITIGATION)	Consolidated
)	C.A. No. 1:12-cv-00386
)	
_____)	
This Document Relates To:)	
)	
All Actions)	
_____)	

5. Each and every action filed in or transferred to in this Court, relating to the Proposed Transaction and involving questions of law or fact similar to those contained in the Consolidated Action shall constitute a case related to the Consolidated Action and shall be governed by the terms of this Order.

B. ORGANIZATION OF PLAINTIFFS’ COUNSEL

6. Plaintiffs Anthony Smith and Shannon Storm will be Interim Co-Lead Plaintiffs.

7. The law firms of Brodsky & Smith, LLC and Faruqi & Faruqi, LLP will serve as Interim Plaintiffs’ Co-Lead Counsel.

8. The law firm of Milberg LLP will serve as Interim Liaison Counsel.

9. All documents previously served and filed to date in any of these cases consolidated herein are deemed part of the record in the Consolidated Action. The Consolidated Amended Complaint to be filed by the Interim Co-Lead Plaintiffs in the action docketed at C.A. No. 1:12-cv-00386 shall be deemed the operative complaint in the Consolidated Action. Defendants need not answer or otherwise move in response to the complaints filed previously in any of the other constituent actions.

10. Interim Plaintiffs' Co-Lead Counsel must set policy for plaintiffs for the prosecution of this litigation, delegate and monitor the work performed by plaintiffs' attorneys to ensure that there is no duplication of effort or unnecessary expense, coordinate on behalf of plaintiffs the litigation and conduct of discovery proceedings, and provide supervision and coordination of the activities of plaintiffs' counsel.

11. Interim Plaintiffs' Co-Lead Counsel must be responsible for coordinating all activities and appearances on behalf of plaintiffs and for the dissemination of notices and orders of this Court as well as for communications to and from this Court. No motion, request for discovery, or other pre-trial or trial proceedings shall be initiated or filed by any plaintiffs except through Interim Plaintiffs' Co-Lead Counsel. Interim Plaintiffs' Co-Lead Counsel shall further be responsible for creating and maintaining a master service list of all parties and their respective counsel.

12. This Court requests the assistance of counsel in calling to the attention of the Clerk of this Court the filing or transfer of any case that might properly be consolidated as part of the Consolidated Action.

13. When a case that arises out of or relates to the same subject matter as the Consolidated Action is hereinafter filed in this Court or transferred from another court, the Clerk of this Court shall:

- a. place a copy of this Order in the separate file for such action;
- b. mail, telecopy or send via electronic mail a copy of this Order to the attorneys for the plaintiff(s) in the newly-filed or transferred case and to any new defendant(s) in the newly-filed or transferred case; and
- c. make the appropriate entry in the docket for C.A. No. 1:12-cv-00386.

14. Each action that arises out of or relates to the same subject matter of the Consolidated Action that has been or is subsequently filed in or transferred to this Court, shall be consolidated with the Consolidated Action and this Order shall apply thereto, unless a party objects to consolidation, or any provision of this Order. Any objection to this Order shall be made within ten (10) days after the date upon which a copy of this Order is served on counsel for any party, by filing an application for relief with the Court. Nothing in the foregoing shall be construed as a waiver of any defendant's right to object to consolidation of any previously filed or transferred related action.

15. Filing of papers via the Court's ECF system shall be deemed to satisfy the service requirement as to all parties whose counsel receive ECF notices electronically. All attorneys of record must register for ECF and must file an appearance through the ECF system. No service is required on any party not registered for ECF. Service of any document which is not electronically filed via ECF shall be made on plaintiffs by serving a copy of the paper by overnight mail service, electronic mail, telecopy or hand delivery to Interim Plaintiffs' Co-Lead Counsel; if service is to be made on a defendant, such service can be made via serving a copy of

the paper by overnight mail service, electronic mail, telecopy or hand delivery on counsel for the defendant.

C. INITIAL SCHEDULE OF PROCEEDINGS

16. In light of the fact that (1) there exists similar litigation relating to the Proposed Transaction currently pending in the Circuit Court for Kent County, Michigan, and (2) the parties in the present, Consolidated Action are discussing the most efficient means for coordinating the federal and Kent County actions, the parties shall advise the Court within fifteen (15) days as to whether they intend to proceed with a Case Management Order in this Consolidated Action. .

17. Defendants need not answer, move or otherwise plead in response to the original complaints.

Dated: April 27, 2012

STIPULATED TO BY:

/s Paul F. Novak

Paul F. Novak
MILBERG LLP
One Kennedy Square
777 Woodward Avenue, Suite 890
Detroit, MI 48226
Tel.: (313) 309-3760
Fax: (313) 447-2038

Benjamin Y. Kaufman
MILBERG LLP
One Pennsylvania Plaza
New York, New York 10119
Tel.: (212) 594-5300
Fax: (212) 868-1229

*Interim Liaison Counsel for Plaintiffs
Anthony Smith and Shannon Storm*

/s Evan J. Smith

Evan J. Smith
BRODSKY & SMITH, LLC

Two Bala Plaza, Suite 602
Bala Cynwyd, PA 19004
Tel.: (610) 667-6200
Fax: (212) 667-9029

/s David A.P. Brower

David A.P. Brower
Brian C. Kerr

BROWER PIVEN

A Professional Corporation
488 Madison Avenue, 8th Floor
New York, NY 10022
Tel.: (212) 501-9000
Fax: (212) 501-0300

Counsel for Plaintiff Anthony Smith

/s Juan E. Monteverde

Juan E. Monteverde
FARUQI & FARUQI, LLP
369 Lexington Avenue, 10th Floor
New York, NY 10017
Tel.: (212) 983-9330
Fax: (212) 983-9331

Counsel for Plaintiff Shannon Storm

/s David J. Gass

David J. Gass
James R. Peterson
Andrew D. Portinga
MILLER JOHNSON
250 Monroe Avenue NW, Suite 800
Grand Rapids, MI 49501-0306
Tel. (616) 831-1700

/s James L. Thompson

Anton R. Valukas
James L. Thompson
Suzanne J. Prysak
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654

Tel.: (312) 923-2944
Fax: (312) 840-7344

*Counsel for X-Rite, Inc., Thomas J.
Vacchiano, John E. Utley, Gideon Argov,
Bradley J. Coppens, David A. Eckert, Colin
M. Farmer, Daniel M. Friedberg, L. Peter
Frieder, and Mark D. Weishaar*

/s/ Scott R. Murphy

Scott R. Murphy

BARNES & THORNBURG LLP

Scott.Murphy@BTLaw.com

171 Monroe Avenue N.W., Suite 1000

Grand Rapids, Michigan 49503-2694

Tel: (616) 742-3938

Fax: (616) 742-3999

/s/ J. Christian Word

J. Christian Word

LATHAM & WATKINS LLP

555 Eleventh Street, NW, Suite 1000

Washington, D.C. 20004

Tel.: (202) 637-2200

Fax: (202) 637-2201

Counsel for Danaher Corporation

NOW, THEREFORE, IT IS HEREBY ORDERED:

BY THE COURT:

Dated: _____, 2012

United States District Judge